THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 812 of 2001
Old F.A.F.O. No. 818 of 1988

Mohan Ram, son of Sri Dev Ram,
Resident of village Bagpali, Post Danya, Patti Rangod,
District Almora.
(Claimant)

……..**Appellant**.

Versus

1. U.P. State Road Transport Corporation, through
   General Manager, Kumaon Region, Nainital, U.P.
2. Oriental Insurance Co. Ltd., Hazratganj, Lucknow.

……**Respondents**.

Sri Anup K. Verma, holding brief of Sri C.D.Bahuguna, learned counsel for the appellant.
Sri A.N. Sharma, Advocate, learned counsel for respondent 1.
Sri Deepak Rawat, Adv., for the respondent no.2.

Date May 16, 2006.

(Hon'ble B.S. Verma, J.)

This appeal has been preferred under Section 110-D of the Motor Vehicles Act 1939 ***(in short the Act)*** against the judgment and order dated 18-6-1988 passed by the Motor Accident Claims Tribunal/ District Judge, Almora ***(in short the Tribunal)*** in Motor Accident Claim Petition No.10 of 1987, Mohan Ram Vs. U.P.S.R.T.C. and another, whereby the claim petition was decreed for compensation of Rs. 15,000/- under Section 92-A of the Act on the principle of no fault liability holding that the accident was not caused due to rash and negligent driving by the driver of bus No. URN-5949 belonging to the O.P.-respondent UPSRTC.

Relevant facts giving rise to the present appeal are that claimant-appellant filed a claim petition for compensation of Rs. 3,00,000/- for the death of his son Anand Ram, aged ten years and then a student, who sustained fatal injuries on 29-10-1986 as a result of being hit and crushed under the front right wheel of UPSRTC bus no. URN-9549 near place Dania. It is alleged that on the fate-ful day Anand Ram had gone to ***Atta Chakki*** and while he was returning

from there he was hit by the offending bus and crushed under the wheel with the result Anand Ram sustained injuries and he was shifted to Government Hospital Dania, where he was given primary treatment and ultimately died at about 7-30 p.m. It was alleged that the bus was being driven rashly and negligently.

The owner of the bus-U.P.S.R.T.C. filed its written statement and resisted the claim petition. It was not disputed that Anand Ram sustained injuries being crushed under the wheel of the bus. It was also not disputed that the bus was being driven by Hayat Singh at the time. It was denied that the bus driver was rash and negligent in driving. It was pleaded that the bus driver suddenly heard a sound from the right back side and he stopped the bus and got down from it. The driver found a boy lying on the road having suffered injuries. The injured boy was taken to Government Hospital Dania and was admitted for treatment. The driver immediately informed the authorities concerned, who came at the spot to make the inquiries. It was also pleaded that five feet wide road was left on the right side and there was no occasion for the driver to cause injury to the boy and that the accident occurred due to sole negligence on the part of the boy himself. Quantum of compensation claimed was also challenged.

The Oriental Insurance Company also filed written statement stating that it was not the insurer of the vehicle and there is no question of liability on the Insurance Company.

The learned Tribunal framed following issues:-

1. Whether the accident resulting in the death of Anand Ram s/o Mohan Ram took place on 29.10.86 at 1 P.M. due to rash and negligent driving by the driver of bus No. URN-9549?

2. Whether the vehicle was not insured with the O.P.No.2? If so, its effect?

3. Whether the amount claimed, as compensation, is excessive?

4. Whether the petitioners are entitled to claim compensation under Sec. 92-A of the Motor Vehicles Act?

5. To what compensation, if any, are the petitioners entitled?

In support of their claim, the claimants filed extract from family register, copy of Post Mortem Report, bed head ticket of the dispensary, injury report, copy of F.I.R. lodged in connection with the accident and have produced P.W. Mohan Ram, P.W.2, Saruli Devi, P.W. 3 Jagannath Ram, eye witness of the accident, P.W.4 Joga Ram, Gram Pradhan, P.W. 5 Dr. M.L.Agarwal and P.W.6, Dr. Salman Ahmad, Medical Officer, Govt. Dispensary Dania. On the other hand, the Opposite Parties filed copy of the report lodged by the driver, Ext. A-1 and produced D.W.1 Hayat Singh, the driver of bus and D.W.2, the conductor of the bus to establish that there was no negligence on the part of the driver of the bus.

The learned Tribunal after recording the evidence led by both the parties came to the conclusion that the bus was not being driven at a high speed and Issue No.1 was answered in the negative against the claimants. On Issue No.2, it was held that the bus was not insured with the Oriental Insurance Company on the date of accident, therefore, the Issue No.2 was decided accordingly. On Issue No.3 regarding quantum of compensation, the learned Tribunal was of the view that the child might have earned Rs. 13/ --14/- per day from manual labour because there was no evidence that he was getting education to have a bright future, though the Tribunal has accepted that the boy might have lived up-to the age of 75 years. Ultimately, it was concluded that the adequate compensation in the present case would have been Rs. 10,000/-. On Issue No.4 relating to compensation under Section 92-A of the Act, the learned Tribunal found that the claimants were entitled to get compensation of Rs. 15,000/- on the principle of no fault liability. Ultimately, the claim petition was decreed.

In this appeal, the impugned award has been challenged mainly on the ground that the finding on Issue Nos 1, 3 and 5 recorded by the learned Tribunal is not based on the evidence on record.

I have heard learned counsel for the parties and perused the entire material on record including the lower court record.

It has been vehemently submitted by the learned counsel for the claimant-appellant that in the instant case, there was clear cut negligence on the part of the driver of the offending bus and the finding to the contrary is not sustainable in the eye of law. There was no reason for the learned Tribunal to have thrown out the ocular testimony of the eye-witnesses P.W.3 Jagannath. It was argued that in the claim petitions under the Act, strict proof of any fact is not required.

For a just decision of the appeal the evidence on the point of negligence is to be scrutinized, because in the present case, there are cross-versions regarding the factum of negligence from the side of claimant as well as owner of the vehicle. The copy of the F.I.R. (Ext. 5) is on record, which shows that Joga Ram was the first informant. On the basis of the F.I.R. a case was registered at Crime No. 4 of 1986 under Sections 279/304A I.P.C. against the driver of the offending bus Hayat Singh. The accident took place at about 1 p.m. and the F.I.R. was lodged on the same day, i.e. on 29-10-1986 at 7 p.m. with Patwari Circle Danya. It is true that Joga Ram had not seen the occurrence. Joga Ram was produced as P.W.4. In his testimony, he stated that he was informed about the accident by witness Jagannath PW 3, therefore, on the point of negligence, the testimony of Jagan Nath P.W.3 is material. P.W.3 Jagan Nath has stated that on 29-10-1986, he was going towards Danya from his home. He had seen Hayat Singh driver driving the bus at a high speed. He further stated that the bus hit deceased Anand Ram as

well as Saruli Devi. Sarului Devi was thrown towards the bush, while Anand Ram was crushed under the wheel. The driver was intending to take the vehicle ahead, but he shouted and then, the driver stopped the bus. It is true that this witness himself did not lodge the F.I.R. The allegation of negligence has been denied by the Opposite Party No.1 –U.P.S.R.T.C. The claimant is only required to prove prima facie negligence on the part of the driver of the offending vehicle. The U.P.S.R.T.C. had filed copy of the F.I.R. lodged by driver Hayat Singh with the Patwari as Ext. A-1. In this F.I.R., it has been mentioned by the driver that when the bus reached about ½ km. ahead of police outpost, he saw some children were playing on the road and as soon as he came across them, he heard a sound form behind and he stopped the bus and saw that he was weeping due to injuries on his legs. But it is strange enough that when Hayat Singh appeared in the witness box, he did not state anything about the fact that few children were playing on the road. In his testimony as D.W.1, he had stated that at the spot, there were two children and they were going on the same direction in which the bus was being drive. According to this witness, when the front side of the bus crossed the children, he heard a sound and he stopped the bus. This statement of the driver Hayat Singh clearly goes to show that the deceased was crushed under the right front wheel of the bus. It is not the case of the opposite parties that the driver had not seen the two children just before the accident. Moreover, in the F.I.R. the driver had mentioned that at the place of accident, few children were playing, but this version does not find place in his statement on oath. It is settled law that normally the claimant is required to prove negligence but as in some cases considerable hardship is caused to the plaintiff because the true cause of accident is not known to him but he same is solely within the knowledge of the driver who caused it, the claimant can only prove the accident but cannot prove how it happened to establish negligence on the part of the opposite party. In the circumstances of the case, the principle of res ipsa loquitur is fully applicable. Applying the said principle, it can very well be inferred that the driver of the bus himself was not careful and

Cautious at the time of accident because the deceased was crushed under the right front wheel. It is not disputed that the deceased Anand Ram and Saruli Devi both were of tender age and children of such age group are not supposed to be fully aware of the traffic laws. D.W.1 Hayat Singh could not dare say in his statement on oath that there were any other children expect the deceased and Saruli Devi. At the most it can be presumed that the deceased Anand Ram did contribute to the negligence, but in the facts and circumstances of the case, it cannot be doubted that had be driver been cautious and careful in driving the bus, the fatal accident resulting into the death of Anand Ram could have been avoided especially when the driver had undoubtedly seen two children present on the road and the bus was going on a hill road. In the instant case, if the F.I.R. lodged by the driver Hayat Singh is examined in the light of his statement on oath, it can safely be inferred that the driver had deviated from the stand taken by the U.P.S.R.T.C. There is one more circumstance which goes against the owner of the bus is that in the written statement, it was alleged in the transport authorities also made enquiry into the matter, but neither any such report was placed on the record nor any site plan was filed to show the spot position of the vehicle and the deceased.

Having considered the entire evidence led by the parties, I am of the view that it is a case in which the accident had spoken the story itself. In the present case, two different stories regarding negligence have come forth form the side of both the parties as mentioned above. In the F.I.R. lodged by the driver Hayat Singh, he found that some children were playing on the road, while in the statement, no such averment worth the name was stated. The cumulative effect of the entire material on record is that the driver of the offending bus was rash and negligent in driving the bus and had the driver been vigilant at the place of occurrence, a child of tender age ought not to have lost his life in the vehicular accident. The finding recorded by the learned Tribunal on Issue No.1 is set aside

and it is held that the accident took place due to sole negligence on the part of the driver of the offending bus.

Now, the only question to be answered is what should have been the just compensation in the present case. It is true that at the time of accident, the deceased was not an earning member. Loss of life cannot be exactly compensated in terms of money. In the facts and circumstances of the case, I am of the view that an amount of Rs. 10,000/- towards loss of love and affection can be awarded. Moreover, had the child been alive, he could have supported his father to the tune of Rs. 20,000/- during his whole life span even if it may be taken that the deceased could have earned only Rs. 13/- to Rs.14/- per day as labour as has been observed by the learned Tribunal. In my view, a compensation of Rs. 30,000/- will be a just compensation taking into consideration the facts and circumstances of the case. In addition to it, the claimant-appellant shall also be entitled to get interest @ 6% per annum from the date of claim petition till payment. The amount of compensation i.e. Rs. 15,000/- awarded under Section 92-A of the Act, if already paid, shall be adjusted towards payment of compensation.

In view of the discussion aforesaid, the appeal deserves to be partly allowed and the impugned order is liable to be modified to the above extent.

The appeal is partly allowed. The impugned award dated 18-6-1988 is modified to the extent that the claimant Mohan Ram is entitled to get compensation of Rs. 30,000/- along with interest @ 6% per annum from the date of claim petition, i.e. 18-2-1987 till the date of payment, payable by the U.P.S.R.T.C. The amount of compensation if already paid under Section 92-A of the Act shall be adjusted towards payment of compensation. No order as to costs.

(B.S. Verma, J.)